

SUCV2005-01093
Delaventura v Columbia Acorn Trust et al

05-10793 WGY

File Date	03/21/2005	Status	Disposed: transfered to other court (dtrans)	
Status Date	04/22/2005	Session	G - Civil G	
Origin	1	Case Type	A99 - Misc contract	
Lead Case		Track	F	

Service	06/19/2005	Answer	08/18/2005	Rule12/19/20	08/18/2005
Rule 15	08/18/2005	Discovery	01/15/2006	Rule 56	02/14/2006
Final PTC	03/16/2006	Disposition	05/15/2006	Jury Trial	Yes

PARTIES

Plaintiff

Deam Delaventura
Active 03/21/2005

Defendant

Columbia Acorn Trust
Service pending 03/21/2005

Defendant

Columbia Funds Trust I
Service pending 03/21/2005

Private Counsel 391000

David Pastor
Gilman & Pastor
999 Broadway
Stone Hill Corp Ctr Suite 500
Saugus, MA 01906
Phone: 781-231-7850
Fax: 781-231-7840
Active 03/21/2005 Notify

Private Counsel 391030

Brian E Pastuszewski
Testa Hurwitz & Thibault
125 High Street
High Street Tower
Boston, MA 02110
Phone: 617-248-7000
Fax: 617-248-7100
Active 04/22/2005 Notify

Private Counsel 550123

Kevin McGrath
53 State Street
Boston, MA 02109
Phone: 617-570-1000
Active 04/22/2005 Notify

Private Counsel 546767

Brien T O'Conner
Ropes & Gray
1 International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050
Active 04/22/2005 Notify

SUCV2005-01093

Delaventura v Columbia Acorn Trust et al

Defendant

Columbia Funds Trust II

Service pending 03/21/2005

Private Counsel 658047

Giselle J. Joffre

One International Place

Boston Mass

Boston, MA 02110-2624

Phone: 617-951-7000

Active 04/22/2005 Notify

Private Counsel 546767

Brien T O'Conner

Ropes & Gray

1 International Place

Boston, MA 02110

Phone: 617-951-7000

Fax: 617-951-7050

Active 04/22/2005 Notify

Private Counsel 658047

Giselle J. Joffre

One International Place

Boston Mass

Boston, MA 02110-2624

Phone: 617-951-7000

Active 04/22/2005 Notify

Defendant

Columbia Funds Trust III

Service pending 03/21/2005

Private Counsel 546767

Brien T O'Conner

Ropes & Gray

1 International Place

Boston, MA 02110

Phone: 617-951-7000

Fax: 617-951-7050

Active 04/22/2005 Notify

Private Counsel 658047

Giselle J. Joffre

One International Place

Boston Mass

Boston, MA 02110-2624

Phone: 617-951-7000

Active 04/22/2005 Notify

SUCV2005-01093

Delaventura v Columbia Acorn Trust et al

Defendant

Columbia Funds Trust IV
Service pending 03/21/2005

Private Counsel 546767

Brien T O'Conner
Ropes & Gray
1 International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050
Active 04/22/2005 Notify

Private Counsel 658047

Giselle J. Joffre
One International Place
Boston Mass
Boston, MA 02110-2624
Phone: 617-951-7000
Active 04/22/2005 Notify

Defendant

Columbia Funds Trust V
Service pending 03/21/2005

Private Counsel 546767

Brien T O'Conner
Ropes & Gray
1 International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050
Active 04/22/2005 Notify

Private Counsel 658047

Giselle J. Joffre
One International Place
Boston Mass
Boston, MA 02110-2624
Phone: 617-951-7000
Active 04/22/2005 Notify

Defendant

Columbia Funds Trust VI
Service pending 03/21/2005

Private Counsel 546767

Brien T O'Conner
Ropes & Gray
1 International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050
Active 04/22/2005 Notify

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket

04/22/2005
10:01 AM

SUCV2005-01093
Delaventura v Columbia Acorn Trust et al

Defendant

Columbia Funds Trust VII
Service pending 03/21/2005

Private Counsel 658047

Giselle J. Joffre
One International Place
Boston Mass
Boston, MA 02110-2624
Phone: 617-951-7000
Active 04/22/2005 Notify

Private Counsel 546767

Brien T O'Conner
Ropes & Gray
1 International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050
Active 04/22/2005 Notify

Private Counsel 658047

Giselle J. Joffre
One International Place
Boston Mass
Boston, MA 02110-2624
Phone: 617-951-7000
Active 04/22/2005 Notify

Defendant

Columbia Funds Trusr VIII
Service pending 03/21/2005

Private Counsel 546767

Brien T O'Conner
Ropes & Gray
1 International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050
Active 04/22/2005 Notify

Private Counsel 658047

Giselle J. Joffre
One International Place
Boston Mass
Boston, MA 02110-2624
Phone: 617-951-7000
Active 04/22/2005 Notify

SUCV2005-01093

Delaventura v Columbia Acorn Trust et al

Defendant Columbia Funds Trust XI Service pending 03/21/2005	Private Counsel 546767 Brien T O'Conner Ropes & Gray 1 International Place Boston, MA 02110 Phone: 617-951-7000 Fax: 617-951-7050 Active 04/22/2005 Notify Private Counsel 658047 Giselle J. Joffre One International Place Boston Mass Boston, MA 02110-2624 Phone: 617-951-7000 Active 04/22/2005 Notify
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ENTRIES

Date	Paper	Text
03/21/2005	1.0	Complaint & Jury demand
03/21/2005		Origin 1, Type A99, Track F.
03/21/2005	2.0	Civil action cover sheet filed
04/21/2005		Certified copy of petition for removal to U. S. Dist.. of Defts .Columbia Acorn Trust, Columbia Funds Trust I, Columbia Funds Trust II, Columbia Funds Trust III, Columbia Funds Trust IV, Columbia Funds Trust V, Columbia Funds Trust VI, Columbia Funds Trust VII, Columbia Funds Trust VIII and Columbia Funds Trust XI. U. S. Dist.#(05-10793WGY).
04/22/2005		Case REMOVED this date to US District Court of Massachusetts

EVENTS

I HEREBY ATTEST AND CERTIFY ON

APRIL 25, 2005 **THAT THE**

**FOREGOING DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.**

**MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT**

BY: 

ASSISTANT CLERK.

CIVIL ACTION
COVER SHEET

05-1093

Superior Court Department
County: SUFFOLK

PLAINTIFF(S) DEAN DELAVENTURA		DEFENDANT(S) COLUMBIA ACORN TRUST, ET AL	
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE David Pastor, GILMAN AND PASTOR, LLP 999 Broadway, Suite 500, Saugus, MA 01906 Board of Bar Overseers number: 391000		ATTORNEY (if known)	
Origin code and track designation Place an x in one box only: <input checked="" type="checkbox"/> 1. F01 Original Complaint <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X) <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X) <input type="checkbox"/> 6. E10 Summary Process Appeal (X)			
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side) CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE? A99 Breach of Good Faith F) (X) Yes () No			
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.			
TORT CLAIMS (Attach additional sheets as necessary)			
A. Documented medical expenses to date: 1. Total hospital expenses \$ 2. Total Doctor expenses \$ 3. Total chiropractic expenses \$ 4. Total physical therapy expenses \$ 5. Total other expenses (describe) \$ <div style="text-align: right;">Subtotal \$</div> B. Documented lost wages and compensation to date \$ C. Documented property damages to date \$ D. Reasonably anticipated future medical and hospital expenses \$ E. Reasonably anticipated lost wages \$ F. Other documented items of damages (describe) \$ G. Brief description of plaintiff's injury, including nature and extent of injury (describe) \$ <div style="text-align: right;">TOTAL \$</div>			
CONTRACT CLAIMS (Attach additional sheets as necessary)			
Provide a detailed description of claim(s): Class action complaint alleging breach of covenant of good faith and fair dealing. Plaintiff/Class seek to recover/preclude Contingent Deferred Service Charge assessed class members for redemption of Class B Shares after Defendants engaged in Market Timing transactions. TOTAL \$			
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT			
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."			
Signature of Attorney of Record <i>David Pastor</i>			DATE: 03/17/05

AOTC-6 mtd005-11/99
A.O.S.C. 1-2000

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APRIL 25, 2005, THAT THE

 FOREGOING DOCUMENT IS A FULL,
 TRUE AND CORRECT COPY OF THE
 ORIGINAL ON FILE IN MY OFFICE,
 AND IN MY LEGAL CUSTODY.

 MICHAEL JOSEPH DONOVAN
 CLERK / MAGISTRATE
 SUFFOLK SUPERIOR CIVIL COURT
 DEPARTMENT OF THE TRIAL COURT
BY: *Stephen W. Donovan*

ASSISTANT CLERK.

COMMONWEALTH OF MASSACHUSETTS

1

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

-----X
DEAN DELAVENTURA, on behalf of himself and
all others similarly situated

Plaintiff,

v.

COLUMBIA ACORN TRUST, COLUMBIA FUNDS
TRUST I, COLUMBIA FUNDS TRUST II,
COLUMBIA FUNDS TRUST III, COLUMBIA
FUNDS TRUST IV, COLUMBIA FUNDS TRUST V,
COLUMBIA FUNDS TRUST VI, COLUMBIA
FUNDS TRUST VII, COLUMBIA FUNDS TRUST
VIII, COLUMBIA FUNDS TRUST XI,

Defendants.
-----X

Case No. 05-1093

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
JUL 1 10 31 AM '05
JOSEPH P. MURPHY
CLERK OF SUPERIOR COURT

Plaintiff, by his undersigned attorneys, on personal knowledge as to himself and his
acts and on information and belief as to all other matters, based upon an investigation by Plaintiff's
counsel, alleges as follows:

INTRODUCTION

1. This is a class action brought on behalf plaintiff and all other holders of Class B
shares of Columbia mutual funds as of February 24, 2004 which are still subject to a Contingent
Deferred Sales Charge ("CDSC") being assessed in the event they redeem such shares prior to the
expiration of 6 years from purchase or have been assessed a CDSC for redeeming such shares on
or after February 24, 2004. When a Class B shareholder withdraws money from a particular
Columbia Fund by redeeming shares of that fund, a percentage of the proceeds is charged by
Columbia before the balance is delivered to the shareholder. Columbia calls this penalty a CDSC.

Typically, the CDSC charge is 5% for withdrawals in the first year after purchase, 4% in the second, 3% in the third or fourth, 2% in the fifth, and 1% in the sixth.

2. This claim is based upon the fact that Columbia through certain of its employees (and agents) engaged in misconduct constituting a breach of contract with holders of Class B shares in a Columbia Fund. Those holders of Class B shares who wish to cease doing business with the Fund may only do so by paying a penalty. In fact, such holders should be given the opportunity to withdraw money from Columbia Funds without a penalty because an implied term of the agreement pursuant to which the investments were made was that Columbia would conduct itself with a high degree of integrity and the fact that Columbia did not so conduct itself amounts to a breach of contract, so that Class B shareholders should have the opportunity to withdraw their funds without penalty. Defendants' misconduct is also a breach of their obligation to act fairly and in good faith with respect to their contract, as well as a breach of their fiduciary duties of care, loyalty, and good faith.

3. The following facts and circumstances alleged below constitute a breach of the agreement, and the covenants of good faith and fair dealing, between defendants and class members in that defendants' actions give rise to serious doubts concerning the integrity of defendants. In particular, (a) the payment of \$140 million in disgorgement and penalties; (b) the specificity of the wrongdoing alleged by the governmental agencies; (c) the substantial redemptions by shareholders following the charges being made public; (d) the adverse reporting in the media; (e) the plethora of actions, including class actions, commenced against defendants; (f) the increased outflow of shareholder funds from the defendants, and the decreased inflow of funds to defendants, giving rise to possible adverse consequences for class members, i.e. among other things, increased administrative costs and forced sales of stock to raise money for redemptions.

4. Class members should not be forced to perform under an agreement which has been breached by defendants. In particular, class members should be free to decide whether, under the circumstances, they wish to remain shareholders without the disincentive of a penalty if they decide to redeem their shares and shareholders who were penalized for redeeming their shares after the above charges were made public should be refunded the amount of the penalty.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the Defendants Columbia as they have their headquarters and do substantial business in the Commonwealth of Massachusetts.

6. Venue is proper as Defendants Columbia have their principal place of business in Boston, Suffolk County, Massachusetts. The Defendants have, at all times material to this complaint, conducted business in this Commonwealth related to the events giving rise to the claims asserted in this complaint and are registered to do business in the Commonwealth of Massachusetts. Many of the witnesses and a substantial number of the documents and sources of proof are located in Massachusetts.

PARTIES

7. Plaintiff Dean Delaventura was a holder of 126.582 shares of Columbia Growth Stock Fund B shares issued by Columbia as of February 24, 2004.

8. Defendants Columbia Acorn Trust, Columbia Funds Trust I, Columbia Funds Trust II, Columbia Funds Trust III, Columbia Funds Trust IV, Columbia Funds Trust V, Columbia Funds Trust VI, Columbia Funds Trust VII, Columbia Funds Trust VIII, Columbia Funds Trust XI (collectively "Columbia") are open-end registered investment companies organized under the laws of the Commonwealth of Massachusetts as business trusts. Columbia maintains its principal executive offices at One Financial Center, Boston, Suffolk County, MA

02111. Columbia is the registrant under the Securities Act of 1933 and Investment Company Act of 1940. Columbia has approximately 140 mutual funds which have as many as seven classes of shares (A, B, C, D, G, T and Z) for each fund. Columbia funds were the subject of improper market timing, including the Columbia Growth Stock Fund.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

9. Plaintiff brings this action as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure on behalf of himself and other members of the Class, consisting of all holders of Class B Shares of Columbia mutual funds as of February 24, 2004 which are still subject to a CDSC being assessed in the event they redeem such shares prior to the expiration of 6 years from purchase or have been assessed a CDSC for redeeming such shares on or after February 24, 2004.

10. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff, and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of members of the Class. Record owners and members of the Class may be identified from records maintained by Columbia and may be notified of the pendency of this action by mail, using the form of notice similar to that used in class actions.

11. Plaintiff's claims are typical of the claims of the putative Class members. Specifically, Plaintiff claims that Defendants' conduct injured Plaintiff and Class members alike by assessing CDSC fees to all Class members who redeem their shares on or after February 24, 2004.

12. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. The common questions of law and fact include:

- (a) Whether defendants has breached its fiduciary duty to Plaintiff and the Class;
- (b) Whether defendants has breached its duties of good faith and fair dealing; and
- (c) Whether defendants' conduct constitutes a breach of contract.

13. Plaintiff can and will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in class action litigation to vigorously prosecute this action on behalf of the putative class members.

14. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for Class members to seek redress individual for the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FACTS

BACKGROUND

15. A Mutual Fund is a fund that is managed by an investment company that manages the money of its shareholders.

16. Mutual funds are priced once a day, at 4:00 p.m. EST. The price, known as the Net Asset Value ("NAV"), generally reflects the closing prices of the securities that comprise a given fund's portfolio, plus the value of any cash that the fund manager maintains for the fund, divided by the number of outstanding shares.

17. Market timing is an investment strategy that involves the short-term trading of securities to take advantage of market fluctuations. Market timing is often employed where one can predict with reasonable certainty the effect on a particular security. Market timing works to the detriment of long-term shareholders in a number of ways: (a) market timing dilutes the value of the fund by allowing the timer to siphon short term profits from what is otherwise a long-term investment vehicle; (b) market timing may add to the transactional costs of the fund because of more frequent purchases and sales; (c) the fund may realize taxable capital gains at an undesirable time; and (d) market timing may result in managers having to sell stock into a falling market. Where money is not invested in the fund, but is kept in cash, then the fund's shareholders are deprived of the advantages of being fully invested in an appreciating stock market.

THE CLASS B SHARES

18. The Columbia Funds claims that the interests of fund shareholders their highest priority. They had a reputation for good faith and fair dealing, and for strict adherence to their duties as a fiduciary: loyalty, candor, and due care which eschews any sort of unfair business practices.

19. Columbia contracted, agreed, represented and warranted that it would continue to conduct its business at the same level of integrity while purchasers of B shares held those shares.

20. Columbia violated its agreement by engaging in various forms of misconduct, including market timing, which indicated, among other things, that the interests of the fund shareholders was not the highest priority, that they did not act in good faith, that they engaged in unfair business practices, and that their integrity was seriously compromised. Under these circumstances, holders of B shares should be allowed to redeem their shares without penalty.

21. Columbia has been subject to a series of investigations by federal and state regulators.

Governmental Action

22. On February 24, 2004, the Attorney General of the State of New York announced the filing of civil charges in New York Supreme Court (the “NY State Action”) against Columbia “for engaging in a massive mutual fund timing scheme.”

23. On February 24, 2004, the SEC announced that it had filed a civil fraud complaint in the United States District Court for the District of Massachusetts (the “SEC Action”) against Columbia.

24. On February 9, 2005, the SEC filed an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order settling the matter. Pursuant to the Order, the SEC made a litany of findings constituting misconduct, \$70 million was to be paid in disgorgement and \$70 million was to be paid in civil penalties, and a number of remedial initiatives would be instituted.

25. In sum, a total of \$140 million was paid in disgorgement and penalties in the NY State and SEC Actions as a result of the wrongful conduct complained of therein. Further a number of costly remedial initiatives were instituted to prevent such future conduct.

26. Notwithstanding the foregoing, Class Members who wish to sell their shares and so cease doing business with Columbia prior to the expiration of six years from purchase have been and will be required to pay a significant CDSC charge.

27. Columbia’s breach of contract – its failure to maintain, in the words of Benjamin Cardozo, “the punctilio of an honor most sensitive” – allows Plaintiff and the other members of the Class to decide whether they wish to continue to invest in a tainted company and, if he

wishes, to sell his shares without penalty. Plaintiff and the other members of the Class should not be required to keep their money at risk with an allegedly unethical or dishonest company which has breached its contract with Plaintiff and the other members of the Class.

COUNT I
(Breach of Contract)

28. Plaintiff realleges and incorporates by reference each and every allegation of this complaint as if fully stated herein.

29. Defendants agreed to perform investment advisor and management services to Plaintiff and the other members of the Class.

30. Defendants had an implied contractual duty to perform the investment advisor and management services in good faith.

31. Defendants breached its contracts with Plaintiff and all Class members and the implied covenant of good faith and fair dealing in the performance of those contracts, by:

- (a) engaging in various forms of misconduct, including market timing;
- (b) by failing to act in the best interests of the Class B shareholders; and
- (c) by engaging in unfair and deceptive trade practices in the performance of their contractual duties.

32. Defendants' breaches of contract and the implied covenant of good faith and fair dealing were so material as to justify Plaintiff and all class members to terminate the contracts, and render it inequitable for Defendants to collect the Contingent Deferred Sales Charge from Plaintiff and all Class members who elect to withdraw their funds.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and the Class prays for judgment as follows:

- (i) Certifying that this action may be maintained as a class action pursuant to the provisions of Rule 23 of the Massachusetts Rules of Civil Procedure on behalf of all holders of Columbia Fund Class B shareholders during the Class Period;
- (ii) Designating Plaintiff and Plaintiff's counsel as class representative and class counsel, respectively;
- (iii) Entering Judgment against Defendants and in favor of Plaintiff and the Class on all claims:
- (iv) Requiring Defendants to pay Plaintiff's and each Class member their actual damages;
- (iv) Granting Plaintiff and the other members of the Class equitable relief from the Contingent Deferred Sales Charge;
- (v) Requiring Defendants to pay Plaintiff's reasonable attorney's fees and costs of suit; and
- (vi) Such other and further relief that the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial on all such issues that are triable before a jury.

Dated: March 21, 2005

GILMAN AND PASTOR, LLP

BY: 

David Pastor (BBO #391000)
John C. Martland (BBO #322980)
999 Broadway, Suite 500
Saugus, MA 01906
Tel.: (781) 231-7850
Fax: (781) 231-7840

RABIN & PECKEL LLP

275 Madison Avenue
Suite 420
New York, NY 10016
Tel.: (212) 880-3722

GLANCY BINKOW & GOLDBERG LLP

1801 Avenue of the Stars
Suite 311
Los Angeles, CA 90067
Tel.: (310) 201-9150

ATTORNEYS FOR PLAINTIFF

I HEREBY ATTEST AND CERTIFY ON

APRIL 25, 2005 THAT THE
FOREGOING DOCUMENT IS A FULL,
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AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY: 

ASSISTANT CLERK.

Suffolk Superior Civil # 05-1093

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DEAN DELAVENTURA, on behalf of himself and
all others similarly situated

Plaintiff,

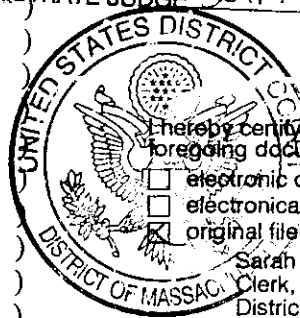
v.

COLUMBIA ACORN TRUST, COLUMBIA
FUNDS TRUST I, COLUMBIA FUNDS TRUST
II, COLUMBIA FUNDS TRUST III, COLUMBIA
FUNDS TRUST IV, COLUMBIA FUNDS TRUST
V, COLUMBIA FUNDS TRUST VI, COLUMBIA
FUNDS TRUST VII, COLUMBIA FUNDS
TRUST VIII, COLUMBIA FUNDS TRUST XI,

Defendants.

Case No. _____

MAGISTRATE JUDGE Dein



I hereby certify on 4/21/05 that the
foregoing document is true and correct copy of the
☐ electronic docket in the captioned case
☐ electronically filed original filed on
☒ original filed in my office on 4/20/05
Sarah A. Thornton
Clerk, U.S. District Court
District of Massachusetts

By: _____
Deputy Clerk

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, the Defendants¹ file this Notice of Removal. This notice removes the civil action *Dean Delavventura v. Columbia Acorn Trust, et al.*, C.A. No. 05-1093 (the "Civil Action") filed in the Massachusetts Suffolk County Superior Court.

As grounds for this removal, the Defendants state as follows:

1. The Civil Action was filed on March 21, 2005. On or about that date, Plaintiff mailed a copy of the complaint, together with a letter making a demand on Defendants pursuant to M.G.L.c. 93A, to the Defendants by certified mail, return receipt requested. A copy of the

¹ The Defendants include Columbia Acorn Trust, Columbia Funds Trust I, Columbia Funds Trust II, Columbia Funds Trust III, Columbia Funds Trust IV, Columbia Funds Trust V, Columbia Funds Trust VI, Columbia Funds Trust VII, Columbia Funds Trust VIII, Columbia Funds Trust XI (collectively, the "Defendants").

Complaint and demand letter are attached as Exhibit A. The Complaint has not been served on any Defendant.

2. Defendants timely file this notice of removal within the thirty days set forth in 28 U.S.C. § 1446(b).

I. GROUNDS FOR REMOVAL

3. This Court has federal jurisdiction over this Civil Action pursuant to 28 U.S.C. § 1331 on two independent grounds.

A. SLUSA PREEMPTION

4. This matter raises a federal question under the Securities Litigation Uniform Standard Act of 1998 ("SLUSA"). Under SLUSA, federal courts have exclusive jurisdiction over certain "covered class actions" involving a covered security. 15 U.S.C. § 78bb(f)(2). Plaintiff's state court action is a "covered class action" involving a "covered security."

5. A "covered class action" may meet either of the following two requirements: (a) "damages are sought on behalf of more than 50 persons or prospective class members" and common questions of law or fact predominate over questions affecting individual persons or class members; or (b) "one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated." 15 U.S.C. § 78bb(f)(5)(B)(I) & (II). This action meets each of these requirements. For example, Plaintiff expressly seeks damages on behalf of more than 50 class members. (Complaint, ¶ 10). Plaintiff also purports to represent a putative class of "all others similarly situated." And, Plaintiff alleges that questions of law and fact common to the class predominate over any questions affecting only individual class members. (Complaint, ¶¶ 9-14). For these and other reasons, this action is a covered class action.

6. This action concerns a “covered security” within the meaning of 15 U.S.C. § 78bb(f)(1). Interests of shareholders in Defendants’ Funds are registered with the Securities and Exchange Commission (the “SEC”) as securities under the Securities Act of 1933, and the Defendants’ Funds referred to in the Complaint are registered with the SEC as investment companies under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, *et seq.* As such Plaintiff’s Class B shares are covered securities. Kircher v. Putnam Funds Trust, et al., 2005 WL 757255, *2 (7th Cir. Apr. 5, 2005).

7. This action is “based upon the statutory or common law of any State.” See 15 U.S.C. § 77p(b). The Plaintiff alleges a claim under state law resulting allegedly from unfair or deceptive conduct. (Complaint, ¶¶ 28-32).

8. SLUSA requires removal of a “covered class action based upon the statutory or common law of any State or subdivision thereof...alleging --

- (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or
- (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.”

15 U.S.C. § 78bb(f)(1).

9. Plaintiff’s claims are thus subject to mandatory removal under SLUSA. Plaintiff’s claims concern Defendants’ alleged misrepresentation or omissions and/or employment of a manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security. Specifically, the allegations relate to market timing and valuation, and allege that Defendants’ conduct was dishonest, unfair and deceptive. See, e.g., Complaint, ¶¶ 17, 19 (“Columbia represented and warranted that it would continue to conduct its business at the same level of integrity”), ¶¶ 20, 27 (Defendants allegedly “dishonest”), ¶ 31(c)

(defendants allegedly “engag[ed] in unfair and deceptive trade practices”). The alleged unfair and deceptive trade practices can only relate to the Funds’ statements or omissions in their sales prospectuses regarding market timing. Plaintiff alleges no other unfair or deceptive trade practices. “Artful pleading,” in which plaintiffs “disguise[s] a federal claim as a claim arising under state law,” cannot defeat removal pursuant to SLUSA -- rather, courts may “look beyond the complaint” to ascertain the true nature of Plaintiff’s claim. See Korinsky v. Salomon Smith Barney, Inc., No. 01 Civ. 6085 (SWK), 2002 WL 27775, *2 (S.D.N.Y. Jan. 10, 2002) (denying motion to remand and granting motion to dismiss complaint pursuant to SLUSA).

10. Plaintiff’s claims are “in connection with” the purchase or sale of a covered security. In order for a plaintiff’s claims to be “in connection with” the purchase or sale of a security for SLUSA purposes, a plaintiff need only allege an injury as “a result of deceptive practices ‘touching’ its purchase or sale of securities.” Araujo v. John Hancock Life Ins. Co., 206 F.Supp.2d 377, 383 (E.D.N.Y. 2002) (citation omitted). This is precisely what the Complaint alleges. First, Plaintiff here is complaining about misrepresentations in connection with the imposition of a deferred sales charge on “Class Members who wish to sell their shares,” who allegedly “have been and will be required to pay a significant CDSC charge” when they sell their shares. Complaint ¶ 26. That sales charge becomes applicable when a Class Member purchases shares in the subject mutual funds, and is triggered and must be paid when those shares are sold within a specific time period. *Id.* ¶ 1.

11. In addition, Plaintiff’s claims are based on allegations that misrepresentations occurred during the class period in connection with the purchase of those shares. (See, e.g., Complaint ¶¶ 1, 2, 3, 7, 19, 20, 29); see also Dabit v. Merrill Lynch, 395 F.3d 25, 46 (2d. Cir.

2005) (SLUSA applies when stock may have been purchased by any plaintiff after alleged misrepresentations were made).

12. Plaintiff's description of Class Members as those who "held" shares is irrelevant since the deferred sales charge that Plaintiff challenges becomes applicable upon a Class Member's purchase of shares and becomes payable upon the sale of those shares. See Complaint ¶ 9; Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 292 F.3d 1334, 1345 (11th Cir. 2002) ("[T]hat class members purchase *and then retain* their Growth Fund shares does not necessarily add anything to the basic claim of purchasing, because all investors, by definition, hold their shares for at least some time after purchase") (emphasis in original); v. Kircher v. Putnam Funds Trust, et al., 2005 WL 757255, *5 (7th Cir. Apr. 5, 2005) ("[P]laintiffs' effort to define non-purchaser-non-seller classes is designed to evade PSLRA in order to litigate a securities class action in state court in the hope that a local judge or jury may produce an idiosyncratic award. It is the very sordid maneuver that SLUSA is designed to prevent."); Cape Ann Investors LLC v. Lepone, 296 F.Supp.2d 4 (D.Mass. 2003).

13. Plaintiff also alleges that market timing improperly allowed certain investors "to take advantage of market fluctuations" through "short-term trading" practices. (See Complaint, ¶ 17). Claims relating to such trades are, as well, made in connection with the purchase or sale of securities. See Kircher, at *5 (claims based upon alleged misrepresentations and manipulative conduct relating to market timing are in connection with purchase and sale of securities).

B. PREEMPTION UNDER THE INVESTMENT COMPANY ACT

14. Plaintiff's claims arise under the Investment Company Act of 1940 ("1940 Act"). That act preempts any state law claims of the nature present here. See 15 U.S.C. § 80a-50.

15. For example, the Plaintiffs' state law claim raise questions of fair value, and all such questions are governed by the 1940 Act. See 15 U.S.C. § 80a-22. Plaintiff alleges, in part,

that the value of his shares was diluted by market timing; this will necessarily entail a determination of Net Asset Value under the fair value rules and procedures of the 1940 Act. Complaint ¶¶ 15-17. The fair value rules and procedures set forth in §§ 2(a)(41) and 22 lie at the heart of the 1940 Act, and are closely regulated by the SEC. When “Congress...so completely pre-empt[s] a particular area th[at] any civil complaint raising that select group of claims is necessarily federal in character,” Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63-64 (1987), a state law action can be removed, regardless of how the action is plead. Thus, the Seventh Circuit recently announced that Sections 201(b) and 202(a) of the Communications Act completely preempt state law challenges to the validity of the terms and conditions of a telephone service agreement. See Boomer v. AT&T Corp., 309 F.3d 404, 417-18 (7th Cir. 2002). Congress’ intent to completely preempt state law in this area, the Court found, was evidenced by the goal of the Communications Act to provide uniform terms and conditions of service; in these circumstances, “a state law challenge to the validity of the terms and conditions of a telephone service agreement would result in the application of fifty bodies of law, and this would inevitably lead to customers in different state receiving different terms and conditions.” Id. at 418.

16. Sections (2)(a)(41) and 22 of the 1940 Act are no different. Its legislative history makes clear that the problem of dilution was both significant and national, that the problem was an important reason for enactment of the 1940 Act, and that the provisions at issue are necessary to protect less sophisticated parties. See Investment Trusts and Investment Companies: Hearing before the Senate Subcommittee on Securities and Exchange of the Banking and Currency Committee, 76th Congress, 121-58 (1940) (statement of David Schenker, Chief Counsel, Securities and Exchange Commission, Investment Trust Study). Section 22 grants power to a federal agency -- the SEC -- to “make rules and regulations” to enforce the section. See 15

U.S.C. § 80a-22(c). The SEC has been very active in the arena of regulating the determination of the value of investment company shares, and in the enforcement of its rules, including rules respecting the determination of fair value. See, e.g., SEC v. Heartland Advisors, et al., SEC Litigation Release No 18505 (December 12, 2003). The net asset value requirement must completely preempt state law as to all questions which can impact on the issue of fair value. Otherwise, both investors and investment companies will be subject to inconsistent rules across jurisdictions and the SEC's authority to create uniform standards of valuation would be destroyed.

17. The Plaintiff plainly cannot avoid federal jurisdiction through the "artful pleading" by which he attempts to disguise his federal action in the garb of state law claims. See BIW Deceived, et al. v. Local S6, Industrial Union of Marine and Shipbuilding Workers of America, 132 F.3d 824, 829 (1st Cir. 1997) (plaintiff's state law claims dependant upon an interpretation of a collective bargaining agreement are preempted by federal law). For example, Plaintiff alleges that Defendants "had an implied contractual duty to perform the investment advisor and management services in good faith." (Complaint, ¶ 30). This claim certainly intrudes upon areas governed by the 1940 Act, including the "forward pricing rules" that relate to the determination of a fund's "NAV", or "Net Asset Value". See Rule 22c-1 of the General Rules and Regulations under the 1940 Act (the "1940 Act Regulations"). The method for calculating subaccount values for purposes of such sales and purchases is also set forth and governed by the 1940 Act and the 1940 Act Regulations. See, e.g., 15 U.S.C. § 80a-22(c); 17 C.F.R. §§ 270.2a-4, 270.22c-1, 270.22e-2. This alleged duty arises solely under Rule 2a-4 promulgated under the 1940 Act, although the Complaint itself does not specifically identify the source of the duty. Such claims, as well as Plaintiff's other claims relating to the calculation of

net asset value of the funds are 1940 Act claims, notwithstanding Plaintiff's attempt to couch them under state law. A plaintiff cannot avoid federal court by cloaking a federal question in state law claims. See BIW Deceived, 132 F.3d at 829. Removal based upon the federal jurisdiction provided by the 1940 Act is thus proper. See 28 U.S.C. § 1331.

II. VENUE

18. Venue is proper in this District under 28 U.S.C. § 1441(a) and 15 U.S.C. § 78bb(f)(2), "Removal of Covered Class Actions," added by SLUSA, because the removed action has been pending in this district. Defendants reserve the right to seek the transfer of this matter to another district.

III. NOTICE

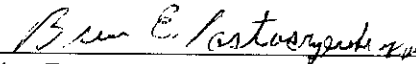
19. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the Superior Court Department of the Trial Court, Suffolk County, Commonwealth of Massachusetts, where this action has been pending, and will serve such notice on all adverse parties.


20. Pursuant to Local Rule 81.1, certified or attested copies of all records, proceedings, and docket entries in the Civil Action will be filed with this Court within 30 days.

21. By filing this Notice of Removal, the Defendants are not making a general appearance and are not waiving their right to raise any defenses and/or grounds for dismissal pursuant to Fed.R.Civ.P. 12, or otherwise, including without limitation inadequacy of service of process or personal jurisdiction.

WHEREFORE, the Defendants respectfully request that the Civil Action be removed to the United States District Court for the District of Massachusetts on the foregoing grounds.


Dated: April 20, 2005


Brian E. Pastuszewski, BBO # 391030
Kevin P. McGrath, BBO # 550123
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109
(617) 570-1000
Attorneys for Defendant Columbia Acorn Trust


Brien T. O'Connor, BBO # 546767
Giselle J. Joffe, BBO # 658047
ROPES & GRAY LLP
One International Place
Boston, MA 02110-2624
(617) 951-7000
*Attorney for Defendants Columbia Funds Trust I,
Columbia Funds Trust II, Columbia Funds Trust
III, Columbia Funds Trust IV, Columbia Funds
Trust V, Columbia Funds Trust VI, Columbia Funds
Trust VII, Columbia Funds Trust VIII, Columbia
Funds Trust XI*

LIBA/1531563.1

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the undersigned party by mail/hand on 4/20/05.


COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

DEAN DELAVENTURA, on behalf of himself and
all others similarly situated

Plaintiff,

v.

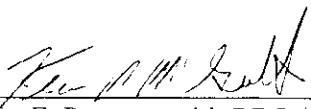
COLUMBIA ACORN TRUST, COLUMBIA
FUNDS TRUST I, COLUMBIA FUNDS TRUST
II, COLUMBIA FUNDS TRUST III, COLUMBIA
FUNDS TRUST IV, COLUMBIA FUNDS TRUST
V, COLUMBIA FUNDS TRUST VI, COLUMBIA
FUNDS TRUST VII, COLUMBIA FUNDS
TRUST VIII, COLUMBIA FUNDS TRUST XI,

Defendants.

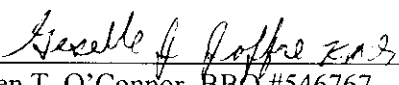
Case No. 05-1093

NOTICE OF FILING OF NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(d), Defendants Columbia Acorn Trust, Columbia Funds Trust I, Columbia Funds Trust II, Columbia Funds Trust III, Columbia Funds Trust IV, Columbia Funds Trust V, Columbia Funds Trust VI, Columbia Funds Trust VII, Columbia Funds Trust VIII and Columbia Funds Trust XI hereby give notice to the Superior Court of Suffolk County, and the attorney for plaintiff Dean Delavventura, that, on April 20, 2005, the aforementioned Defendants filed a Notice of Removal, thereby removing this action to the United States District Court for the District of Massachusetts. A certified copy of the Notice of Removal is attached to this Notice.



Brian E. Pastuszewski, BBO #391030
Kevin P. McGrath, BBO #550123
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109
(617) 570-1000
Attorneys for Defendant Columbia Acorn Trust



Brien T. O'Connor, BBO #546767
Giselle J. Joffe, BBO #658047
ROPES & GRAY LLP
One International Place
Boston, MA 02110-2624
(617) 951-7000
*Attorney for Defendants Columbia Funds Trust I,
Columbia Funds Trust II, Columbia Funds Trust
III, Columbia Funds Trust IV, Columbia Funds
Trust V, Columbia Funds Trust VI, Columbia Funds
Trust VII, Columbia Funds Trust VIII, Columbia
Funds Trust XI*

Dated: April 21, 2005

LIBA/1531828.1

CERTIFICATE OF SERVICE
I hereby certify that a true copy of
the above document was served upon the
attorney(s) of record for each other
party by mail/hand on April 21, 2005.
